Supreme Court, U.S.
FILED

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OFFICE

No.

In The

Supreme Court of the United States

October Term, 1999

Robert F. Spiers,

Petitioner,

vs.

Gene E. Sydnor,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether this Court should exercise its power of supervision and reverse the Fourth Circuit Court of Appeals where the Fourth Circuit dismissed the petitioner's federal civil rights claims on the basis of qualified immunity, even though the evidence overwhelmingly showed that the respondent, Sheriff Gene Sydnor, and any other reasonable law enforcement officer should have understood that arresting the petitioner and publicly humiliating him would have been unlawful and a violation of his clearly established Fourth Amendment rights.

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The petitioner, Robert F. Spiers, respectfully prays that a writ of *certiorari* issue to review the judgment of the United States Court of Appeals for the Fourth Circuit in this case.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit in *Robert F. Spiers v. Gene E. Sydnor,* Civ. No. 98-1798 (4th Cir., 1999), is not published, but can be found at 1999 W L 125727 (4th Cir. (VA)), and appears at Appendix A. The Order of the District Court in *Robert F. Spiers v. Gene E. Sydnor*, Civ. No. 3:97CV841 (E.D.Va. May 24, 1998), is not published, and appears at Appendix B.

STATEMENT OF JURISDICTION

The United States Court of Appeals for the Fourth Circuit (hereinafter sometimes referred to as "the Fourth Circuit") decided this case on March 10, 1999. No petition for rehearing was filed. The jurisdiction of this Court is invoked under 28 U.S.C. §1254 (1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourth Amendment to the United States Constitution provides, in relevant part, that:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . . .

Virginia Code §18.2-460(A) states, in pertinent part, that:

> If any person without just cause knowingly obstructs . . . any law-enforcement officer in the performance of his duties as such or fails or refuses without just cause to cease such obstruction when requested to do so by such . . . law-enforcement officer, he shall be guilty of a Class III misdemeanor.

STATEMENT OF THE CASE

A. Factual Background

On October 11, 1997, the plaintiff, Robert Spiers, the band director for the Lancaster High School Red Devils Marching Band, was lawfully leading the band on an organized parade route in Warsaw, Virginia during the annual Warsaw Harvest Parade. The award-winning band had been invited to participate in the event by the parade event coordinator. (App. E at 19a). The defendant, Gene Sydnor, Sheriff of Richmond County, Virginia, and his deputies were also present at the parade. The parade route went along Route 360 through Warsaw. Prior to reaching the intersection controlled by Sheriff Sydnor, a gap developed between the band Spiers was leading and the parade participants preceding it. (App. A at 3a). Mr. Spiers attempted on at least one occasion to increase the pace at which the band was marching, but was forced to cease his efforts when the band was not capable of keeping that pace and began to "space out." (App. A at 3a).

Sheriff Sydnor was directing traffic at the intersection of Routes 3 and 360. When the Lancaster

Band reached the intersection, Sheriff Sydnor asked Mr. Spiers to pick up the pace. In response, Mr. Spiers stated, "We're going as fast as we can." Sheriff Sydnor then stated, "Pick up the pace or you're out of the parade." Mr. Spiers responded again, "We're going as fast as we can." (App. A at 3a-4a).

The following occurred within a matter of seconds. (App. A at 4a). Sheriff Sydnor physically came over, and grabbed the banner, held by two female band members and then began to turn the girls to the right. The Sheriff never told Mr. Spiers or the band to stop marching or to leave the route. (App. E. at 21a). Mr. Spiers described the moments subsequent to this action, stating:

> I was confused. I had no idea what he was doing. Because of my responsibility for the 200 kids and knowing where the buses were, I instructed them to keep moving towards the buses, and that's when Sheriff Sydnor turned around immediately and handcuffed me, and said, 'You're under arrest,' led me to the curb — the nearest curb, set me down, and said, 'Now sit here and let everyone look at you.

(App. E at 21a). Prior to this altercation, it had been agreed to by the parade organizers that Mr. Spiers and the Lancaster Band would exit the parade into a parking lot near the intersection of Routes 3 and 360. (App. E at 20a).

When arresting Mr. Spiers, the Sheriff forcefully grabbed Mr. Spiers, stated, "You're under arrest," and set him down on the curb in a "very firm" manner. (App. A at 4a; App. E at 21a-23a). Despite the fact that other

officers and police vehicles were available nearby, Mr. Spiers was left handcuffed in public view for approximately fifteen minutes. (App. F at 32a-34a; App. G at 38a). While Mr. Spiers was visibly upset as he sat on the curb, he remained a "perfect gentleman" throughout the ordeal and never resisted in any way. (App. F at 35a). Later, Sheriff Sydnor took Mr. Spiers to the Sheriff's Office, and after a further detention, informed Mr. Spiers that he would not be charged with any offense. (App. A at 4a). While detained, Mr. Spiers became extremely upset, began crying, and began to experience feelings of anger and "pure embarrassment." (App. E at 24a). In describing the emotional trauma he endured in relation to this event, Mr. Spiers stated the following:

> Being a law-abiding citizen, someone who's never been arrested, someone who's never been in trouble with the law, to be handcuffed and arrested in the middle of the street in front of 200, 300 people, in front of my kids, in front of their parents, in front of the community which I abide next to was a very traumatic experience and one that I cannot stop thinking about.
>
> One week after the event, I lost sleep. I constantly think about the event. I run the event over in my mind three, four, five hundred times at night to try to determine whether — was there any other way that I could have done anything different.
>
> For at least a month afterwards, I have been thinking about the event; been on my

> mind nonstop. I still think about it today, not as frequently.
>
> I've been ridiculed; I've been harassed by people who want to know what happened, people who just want to gossip. I have local police officers who like to come play little jokes with their handcuffs — they're friends of mine, and I experience a sense of panic inside when that happens. I play along, you know, with them.
>
> I look at police officers now in a kind of different light than — when you experience being arrested, it changes your way of thinking. I'm notorious now; I'm famous now for reasons that I don't want to be famous. I worked thirteen years to build up a band, to build up a band program, to be famous in that way, and now everywhere I go, we're the band who's been arrested, we're the band director who's been arrested. We went down to New Orleans in December and people there, the first thing they say, 'Lancaster County, oh, you're the band that got arrested.'
>
> I've really been through a lot, and all from this one incident.

(App. E at 25a-27a). Mr. Spiers also described the strain that this event had put on his married life due to the nonstop phone calls he received from the media and others, as well as the effect on him of reading media coverage of the event. (App. E at 27a-28a).

B. The Proceedings Below

On November 7, 1997, Robert Spiers, by counsel, filed a three-count Complaint in the United States District Court for the Eastern District of Virginia in Richmond. The first count alleges that Sheriff Sydnor violated Spiers' First, Fourth, Fifth and Fourteenth Amendment rights and 42 U.S.C. Section 1983, through his actions which constituted excessive force, unlawful arrest, unlawful detainment, and illegal harassment. Count II alleges a state law false imprisonment claim. Count III alleges that Sheriff Sydnor intentionally inflicted emotional harm upon Spiers through his actions, also a state law claim. Following discovery, Sheriff Sydnor served the petitioner with a Motion for Summary Judgment on April 22, 1998. In that motion, the respondent requested, in part, that the District Court grant the respondent qualified immunity as to certain claims. On May 21, 1998, upon hearing argument by counsel, the District Court denied the respondent's Motion for Summary Judgment in its entirety, finding, *inter alia*, that "In a light most favorable to the plaintiff, a jury could find that the defendant is not protected by qualified immunity . . . ." (App. B at 12a).

On May 22, 1998, Sheriff Sydnor filed his Notice of Appeal regarding the District Court's Order denying his Motion for Summary Judgment. This was an interlocutory appeal dealing only with the issue of qualified immunity. On March 10, 1999, the Fourth Circuit reversed the District Court's decision, holding that "an officer in Sheriff Sydnor's position reasonably could have believed that the facts known to him were sufficient to establish probable cause for Spiers' arrest," and, thus,

"Sheriff Sydnor is entitled to qualified immunity." (App. A at 5a). [1]

REASONS FOR GRANTING THE WRIT

The test for qualified immunity is whether the constitutional rights the officer is charged with violating were clearly established at the time of the acts, and whether a reasonable police officer, possessed of the facts with which this officer was confronted, should have appreciated that the proposed course of action violated those standards. *Anderson v. Creighton*, 483 U.S. 635, 640 (1987). A defendant's subjective beliefs about the arrest are irrelevant. *Id.* at 641.

A right is "clearly established" when its contours are sufficiently clear that a reasonable law enforcement officer should have understood that his conduct violated that right. *Id.*

> The Fourth Amendment rule on warrantless arrests is [such a] 'clearly established law.' If an arrest lacks probable cause for its support, it is, objectively speaking, in violation of clearly established law.

Lusk v. Roberts, 611 F. Supp. 564, 569 (D.C.La. 1985)(citing *Trejo v. Perez*, 693 F.2d 482, 488 (5th Cir. 1982

Notably, the qualified immunity defense does not change the well settled standard that disputed factual

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[1] The Fourth Circuit opinion never discusses the petitioner's state law claims.

matters preclude summary judgment. *See Arnott v. Mataya*, 995 F.2d 121, 123-24 (8th Cir. 1993)(motion for immunity denied where parties allege completely different versions of incident and under plaintiff's version there was no probable cause to arrest); *Prokey v. Watkins*, 942 F.2d 67, 72 (1st Cir. 1991)(summary judgment denied where taking the facts in light most favorable to the plaintiff, the court cannot conclude that a reasonable officer might have found probable cause based on the information known to the defendants). Moreover, as stated by the United States Court of Appeals for the Eighth Circuit:

> Not every immunity question can be decided on summary judgment . . . for there may be disputed issues of material fact which prevent it. Whether a reasonable person would know the particular conduct violates a clearly established right may, for example, depend on the resolution of conflicting evidence about what the surrounding circumstances were at the time the official took the challenged action . . . . If the factual circumstances are material to the qualified immunity analysis and remain disputed after initial discovery, . . . the issue cannot be resolved as a matter of law.

Engle v. Townsley, 49 F.3d 1321, 1323 (8th Cir. 1995); *see DiMeglio v. Haines*, 45 F.3d 790, 795 (4th Cir. 1995). This is, in essence, what the District Court concluded in the present case when it properly denied the respondent's Motion for Summary Judgment. In so doing, the District Court found that:

> [I]t would be possible for a jury to find that the actions of [Sheriff Sydnor] acting within his capacity as an officer of the State of Virginia constitute excessive force, unlawful arrest, false imprisonment, unlawful detainment, and illegal harassment in violation of the First, Fourth, Fifth, and Fourteenth Amendments of the Constitution and/or 18 U.S.C. §1983[,]

and that "In a light most favorable to the plaintiff, a jury could find that the defendant is not protected by qualified immunity . . . ." (App. B at 11a-12a). Thus, the District Court recognized that the facts underlying Mr. Spiers' arrest, could enable a jury to find that Sheriff Sydnor did not have justification for the arrest of Mr. Spiers or any basis for the protection of qualified immunity.

Because the District Court did not set forth the specific factual basis for its decision, on appeal, the Fourth Circuit "presented" the facts in the light most favorable to Spiers, the non-moving party below. *See Winfield v. Bass,* 106 F.3d 525, 535 (4th Cir. 1997)(en banc). (App. A at 3a n.1). However, unlike the District Court, the Fourth Circuit clearly failed to consider the facts or the inferences that could be drawn from those facts also in the light most favorable to Spiers as it was required to do. While the specific facts surrounding and leading up to Spiers' arrest are not in dispute, the inferences that can be drawn from those facts are contested by both sides. Thus, by failing to also consider these inferences in the light most favorable to the petitioner the Fourth Circuit has inappropriately traded its judgment for that of the District Court and ultimately a jury.

In *Johnson v. Jones*, 515 U.S. 304 (1995), this Court held that:

> a defendant, entitled to invoke a qualified-immunity defense, may not appeal a district court's summary judgment order in so far as that order determines whether or not the pre-trial record sets forth a 'genuine' issue of fact for trial.

Id. at 319-20. In so holding, this Court noted an important difference in experience of trial judges and appellate judges, stating:

> [T]he existence, or non-existence, of a triable issue of fact — is the kind of issue that trial judges, not appellate judges, confront almost daily. Institutionally speaking, appellate judges enjoy no comparative expertise in such matters.

Id. at 316. While this Court's holding in *Johnson*, does not directly extend to cases such as the present one, *i.e.*, where the facts underlying the arrest are undisputed, *Johnson* does require that an appellate court give proper credence to a district court's determination that a jury issue exists as to whether a defendant is entitled to qualified immunity. *See id.* In the present case, the Fourth Circuit implicitly ignored the District Court's determination that a jury issue existed as to whether Sheriff Sydnor was entitled to qualified immunity. Instead of recognizing the District Court's experience in assessing such matters, the Fourth Circuit took upon itself the task of reconsidering the factual record, and

improperly substituted its judgment for that of the District Court.

Not only did the Fourth Circuit inappropriately substitute its judgment for that of the District Court, but it also either misunderstood or misconstrued the facts of the case. In support of its holding that an officer in Sheriff Sydnor's position could have reasonably concluded that Mr. Spiers was guilty of knowingly obstructing a law enforcement officer, a misdemeanor offense as proscribed by Va. Code §18.2-460, the Fourth Circuit pointed to the following:

> [Sheriff Sydnor] had told Spiers to have the band close the gap or they would remove them from the parade; Spiers had indicated that the band could not speed up; Sheriff Sydnor had instructed the band to leave the parade route; and, Spiers nonetheless, in apparent direct contravention of this instruction, had directed the band to continue marching down the parade route.

(App. A at 5a). This recitation pointedly exemplifies that not only did the Fourth Circuit misconstrue key facts, but it also failed to consider the evidence in the light most favorable to the petitioner.

Simply put, there is no evidence whatsoever that Mr. Spiers obstructed Sheriff Sydnor in any way or committed any offense in the Sheriff's presence. To the point, Mr. Spiers never ignored any order by Sheriff Sydnor. On both occasions, when the Sheriff requested that Mr. Spiers have the band pick up the pace, Mr. Spiers responded, "We're marching as fast as we can." The very

fact that Mr. Spiers politely responded to the Sheriff's requests is proof in and of itself that Mr. Spiers did not ignore any order or request. Further, contrary to the findings of the Fourth Circuit, there is no evidence that Mr. Spiers ever directed his band to do anything in "direct contravention of [the Sheriff's] instruction" (App. A at 5a) since the Sheriff never asked the band to leave the parade at any time. The Fourth Circuit should not be allowed to speculate that the Sheriff's silent grabbing of the banner held by two female band members should have been interpreted as an order for the band to leave the parade route, particularly where Mr. Spiers stated during his deposition, "I was confused. I had no idea what he was doing." (App. E at 21a). Finally, Mr. Spiers never instructed his band to "continue marching down the parade route." (App. A at 5a). As the plaintiff testified, he was merely looking out for the safety of the 200 children for whom he was responsible, and was instructing them to keep moving towards the buses waiting nearby. Taking this evidence in the light most favorable to Mr. Spiers, as the Fourth Circuit was required to do, one simply cannot reach the same conclusions reached by the Fourth Circuit. In fact, to reach the conclusions of the Fourth Circuit one would have to consider the undisputed evidence in the light most favorable to Sheriff Sydnor, the moving party below.

The Fourth Circuit also clearly failed to fully consider the necessary elements of obstruction of a law enforcement officer as established by Virginia case law. In Virginia it is well settled that:

> [t]o constitute obstruction of an officer in the performance of his duty, it is not necessary that there be an actual or technical assault upon the officer, but there

> must be acts clearly indicating intention on the part of the accused to prevent the officer from performing his duty, as to 'obstruct' ordinarily implies opposition or resistance by direct action in forcible or threatened means. It means to obstruct the officer himself, not merely to oppose or impede the process with which the officer is armed.'

Love v. Commonwealth, 212 Va. 492, 494, 184 S.E.2d 769, 771 (1971) (quoting *Jones v. Commonwealth*, 141 Va. 471, 478-79, 126 S.E. 74, 77 (1925)). Virginia Model Jury Instruction (Criminal) 36.100 defines the crime of obstructing a law enforcement officer as requiring the following elements:

> (1)That the defendant by [threats; force] (2) Knowingly attempted to [obstruct; intimidate; impede] a police officer (3) While the police officer was lawfully engaged in his duty.

V.M.J.I. 36.100 (Criminal Supp. 1994).

Here, there is no evidence that Mr. Spiers intentionally and knowingly prevented Sheriff Sydnor from performing his duties through the use of force or threats. Rather, the evidence is that when asked by the Sheriff to have his band march faster, Mr. Spiers peacefully responded to the Sheriff that they were marching as fast as they possibly could. Further, when Sheriff Sydnor forcibly wrenched the high school banner from the hands of two female band members, Mr. Spiers, the band's only adult leader and the only Lancaster High School employee present, merely told the children for

whom he was responsible, to continue marching so they could go off the route to the waiting school buses nearby. In fact, based upon this evidence, a jury could infer that Mr. Spiers was attempting to assist the Sheriff, if by grabbing the banner the Sheriff intended to remove the band from the parade, since Mr. Spiers was simply instructing his band to leave the parade route at the location agreed to with the parade organizers. This is particularly true given Mr. Spiers' testimony that he "had no idea what [the Sheriff] was doing" when Sheriff Sydnor grabbed the banner. (App. E at 21a).

Because there is no evidence that leads to any inference that Mr. Spiers committed any crime, there is likewise no evidence that would support any belief by Sheriff Sydnor that probable cause existed. Probable cause exists if:

> 'at the moment the arrest was made . . . the facts and circumstances within [the Sheriff's] knowledge and of which [the Sheriff] had reasonably trustworthy information were sufficient to warrant a prudent man in believing'

that Mr. Spiers had intentionally obstructed the Sheriff as he was attempting to perform his duties. *Hunter v. Bryant*, 502 U.S. 224, 228 (1991)(quoting *Beck v. Ohio*, 379 U.S. 89, 91 (1964)). Again, there is no evidence upon which a jury could determine that Mr. Spiers had intentionally obstructed the Sheriff. Further, failure to force a high school band to march faster than humanly possible is not an actionable offense in Virginia. Thus, without probable cause to believe a crime had been committed, or any reasonable basis upon which to believe

probable cause existed, Sheriff Sydnor should have realized that his arrest of Mr. Spiers was unlawful.

Finally, the arrest in question must be seen in context. Spiers, a law abiding citizen, was leading an award-winning high school band in a family-oriented parade. Spiers and his band were on the streets of Warsaw at the invitation of the parade organizers. Spiers and his band were not engaged in acts of civil disobedience, but were simply entertaining the good citizens of Richmond County. The alleged criminal conduct for which Mr. Spiers was arrested, handcuffed, and then publicly humiliated in front of his students, their parents, and the general public, consisted of a failure to keep up with the nearest parade participant and simply telling the respondent that the band was doing the best it could to keep up. For a Sheriff or any police officer to believe that Spiers was engaged in criminal behavior under these circumstances is clearly unreasonable and unlawful.

For these very reasons, the District Court correctly found that:

> [i]t would be possible for a jury to find that the actions of the defendant acting within his capacity as an officer of the State of Virginia constitute excessive force, unlawful arrest, false imprisonment, unlawful detainment, and illegal harassment in violation of the First, Fourth, Fifth, and Fourteenth Amendments of the Constitution and/or 18 U.S.C. § 1983[,]

and that "In a light most favorable to the plaintiff, a jury could find that the defendant is not protected by qualified immunity . . . . " (App. B at 12a).

CONCLUSION

In conclusion, the District Court properly found that a jury issue existed as to whether the respondent, Sheriff Sydnor, was justified in his arrest of the petitioner, and was entitled to the protections of qualified immunity. On appeal, the Fourth Circuit improperly substituted its judgment for that of the District Court, failed to consider the evidence in the light most favorable to the petitioner, and misconstrued and misunderstood the evidence in the case. Under such circumstances, the Fourth Circuit has incorrectly found qualified immunity to apply to the respondent. Accordingly, Robert F. Spiers, by counsel, respectfully prays that a writ of *certiorari* issue to review the judgment of the United States Court of Appeals for the Fourth Circuit in this case.

Respectfully submitted,

ROBERT F. SPIERS

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APPENDIX

APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT DECIDED MARCH 10, 1999

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

ROBERT F. SPIERS,
Plaintiff-Appellee,

v.

GENE E. SYDNOR,
Defendant-Appellant.

No. 98-1798

Appeal from the United States District Court
for the Eastern District of Virginia, at Richmond.
Richard L. Williams, Senior District Judge.
(CA-97-841)

Argued: January 25, 1999

Decided: March 10, 1999

Before WILKINS, MICHAEL, and TRAXLER, Circuit Judges.

Reversed by unpublished per curiam opinion.

COUNSEL

ARGUED: John Adrian Gibney, Jr., SHUFORD, RUBIN & GIBNEY, P.C., Richmond, Virginia, for Appellant. Jason Wade Konvicka, EMROCH & KILDUFF, L.L.P., Richmond, Virginia, for Appellee. **ON BRIEF:** William B. Kilduff, EMROCH & KILDUFF, L.L.P., Richmond, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

OPINION

PER CURIAM:

Robert F. Spiers brought this action pursuant to 42 U.S.C.A. § 1983 (West Supp. 1998), alleging that Richmond County, Virginia Sheriff Gene E. Sydnor violated Spiers' Fourth Amendment rights by arresting him without probable cause. The district court denied Sheriff Sydnor's motion for summary judgment, which raised among other defenses a claim of qualified immunity. We reverse.

I.

On October 11, 1997,[1] Spiers, who was employed as the director of the Lancaster High School marching band, was leading the band in a parade through Warsaw, Virginia on Route 360. As the parade progressed, the band moved more slowly than the unit preceding it, and a gap developed between the units. Spiers attempted to have the band move more quickly, but when "the band began to space out," Spiers slowed the band. J.A. 59.

Sheriff Sydnor was controlling traffic flow at an intersection on the parade route. Because the gap between Spiers' band and the unit preceding it had grown so large that one could no longer see the unit ahead over the crest of a hill, Sheriff Sydnor directed Spiers, who was in front of the band, to speed up. Sheriff Sydnor was concerned about the traffic hazard created when a large gap develops in a parade, per-

[1]Because the district court did not set forth the factual basis for its decision, we present the facts in the light most favorable to Spiers. *See Winfield v. Bass*, 106 F.3d 525, 533-35 (4th Cir. 1997) (en banc) (holding that in reviewing the denial of summary judgment on a governmental official's claim of qualified immunity, when the district court fails to set forth fully the factual basis for its decision, this court accepts facts that are undisputed and views the remaining evidence properly before the district court in the light most favorable to the nonmoving party).

mitting drivers to pull into the parade route without recognizing that a parade is in progress. Spiers responded to Sheriff Sydnor that the band was moving as quickly as possible. Sheriff Sydnor stated, "Pick up the pace or you're out of the parade." J.A. 62 (internal quotation marks omitted). Spiers again responded, "We're going as fast as we can." *Id.* (internal quotation marks omitted).

The parties agree that the following occurred within a matter of seconds. Sheriff Sydnor approached a banner at the front of the band carried by two high school girls and began to turn it, and with it the band, to the right.[2] Spiers, however, instructed the band to continue down the parade route. Sheriff Sydnor immediately turned around, handcuffed Spiers, and informed him that he was under arrest. Sheriff Sydnor sat Spiers on the curb and said, "Now sit [there] and let everyone look at you." *Id.* (internal quotation marks omitted). Spiers sat on the curb for approximately 15 minutes until he was transported to the police station, where he was released. No charges were ever filed against Spiers.

II.

Government officials performing discretionary functions are entitled to qualified immunity from liability for civil damages to the extent that "their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). In analyzing an appeal from the rejection of a qualified immunity defense, our first task is to identify the specific right that the plaintiff asserts was infringed by the challenged conduct. *See Taylor v. Waters*, 81 F.3d 429, 433 (4th Cir. 1996). The court then must consider whether, at the time of the claimed violation, that right was clearly established and "'whether a reasonable person in the official's position would have known that his conduct would violate that right.'" *Id.* (quoting *Gordon v. Kidd*, 971 F.2d 1087, 1093 (4th Cir. 1992)). Our review of the denial of summary judgment based on qualified immunity is de novo. *See Pritchett v. Alford*, 973 F.2d 307, 313 (4th Cir. 1992).

[2]There was also undisputed testimony from a third party who witnessed the event that Sheriff Sydnor waved his arms, gesturing that the band should leave the highway.

Spiers asserts that Sheriff Sydnor violated his Fourth Amendment right to avoid an unreasonable seizure by arresting him without probable cause. Sheriff Sydnor maintains that he had probable cause to believe that Spiers had violated Va. Code Ann. § 18.2-460(A) (Michie 1996), which provides in pertinent part, "If any person without just cause knowingly obstructs ... any law-enforcement officer in the performance of his duties as such[,] ... he shall be guilty of a Class 2 misdemeanor." Spiers contends, however, that no reasonable officer could have believed that he possessed probable cause to arrest for a violation of § 18.2-460(A) because there was no evidence that Spiers knowingly or intentionally obstructed the officer in the performance of his duties.

We hold that an officer in Sheriff Sydnor's position reasonably could have concluded that Spiers was guilty of knowingly obstructing a law enforcement officer in his duties. *See United States v. Garcia*, 848 F.2d 58, 59-60 (4th Cir. 1988) (holding that probable cause exists when the facts and circumstances known to the officer "would warrant the belief of a prudent person that the arrestee had committed or was committing an offense" (internal quotation marks omitted)). An officer in Sheriff Sydnor's position reasonably could have believed that Spiers had the requisite intent to obstruct based on the following facts: He had told Spiers to have the band close the gap or they would be removed from the parade; Spiers had indicated that the band could not speed up; Sheriff Sydnor had instructed the band to leave the parade route; and, Spiers nonetheless, in apparent direct contravention of this instruction, had directed the band to continue marching down the parade route.

With the benefit of hindsight, we have no doubt that Sheriff Sydnor overreacted and that Spiers did not intend to violate the law. Nevertheless, based on the information known to Sheriff Sydnor at the moment he arrested Spiers, a reasonable officer could have concluded that Spiers was knowingly obstructing the performance of Sheriff Sydnor's duties. Accordingly, an officer in Sheriff Sydnor's position reasonably could have believed that the facts known to him were sufficient to establish probable cause for Spiers' arrest. Therefore, Sheriff Sydnor is entitled to qualified immunity on Spiers' § 1983 claim alleging that his arrest was unsupported by probable cause in violation

of Spiers' Fourth Amendment rights. *See Malley v. Briggs*, 475 U.S. 335, 344-45 (1986).

REVERSED

APPENDIX B — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA FILED MAY 21, 1998

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

ROBERT F. SPIERS

Plaintiff,

v. Civil Action Number 3:97CV841

GENE E. SYDNOR

Defendant.

ORDER

This matter is before the Court on defendant's motion for summary judgment. For reasons stated from the bench the motion is DENIED IN ITS ENTIRETY.

It is so ORDERED.

Let the Clerk send a copy of this Order to all counsel of record.

May 21, 1998
DATE

/s/ Richard L. Williams
SENIOR UNITED
STATES DISTRICT
JUDGE

APPENDIX C — FINDINGS OF FACT BY THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA DATED MAY 21, 1998

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

ROBERT F. SPIERS,
Plaintiff,-
CASE # 97-CV-841
GENE E. SYDNOR,
Defendant.

The motion for summary judgement, heard May 21, 1998, before the Honorable Richard L. Williams, Judge.

Reporter: Diane Gaynier

Mr. Gibney?
MR. GIBNEY: No, Your Honor.
MR. KONVICKA: Thank you, Judge.
THE COURT: The defendant's motions for summary judgment as to the alleged constitutional violations involves imprisonment is denied. The record presents material issues of disputed facts as to whether the defendant had probable cause to arrest the plaintiff, deciding whether probable cause existed is a determination better left to a jury.

I find that it would be possible for a jury to find that the actions of the defendant acting within his capacity as an officer of the State of Virginia constitute excessive force, unlawful arrest, false imprisonment, unlawful detainment, and illegal harassment in violation of the First, Fourth, Fifth, and Fourteenth Amendments of the Constitution and/or 18 USC, Section 1983.

Moreover, the record includes facts that would be capable of supporting a finding by a jury that as a result of the defendant's conduct, the plaintiff suffered the trauma of great pain, anguish, loss of his rights and liberty, and the fruit's of his legal occupation and other injuries.

The motion of summary judgment on qualified immunity grounds is also denied. In a light most favorable to the plaintiff, a jury could find that the defendant is not protected by qualified immunity under the three-part analysis set forth in Simmons v. Poe.

Specifically, if a jury were to find that no probable cause existed prior to plaintiff's arrest, that the plaintiff neither resisted, nor attempt to obstruct the defendant's order which could support a finding that any reasonable person in the defendant's position should have known that prior to his arrest plaintiff was not obstructing justice and arrested him for violating plaintiff's clearly established rights under the First, Fourth, Fifth, and Fourteenth Amendments of the constitution.

Let me observe that the defendant is a constitutional officer and I don't believe it would be a definition of the word "constitutional officer" if you didn't know he had a constitutional right not to be arrested, and locked up, and humiliated when you weren't doing anything wrong.

But I would hate to think that the good citizens of Virginia would elect anybody to be a

constitutional officer who wasn't aware of those basic constitutional rights. In fact, if a jury were to believe plaintiff's testimony and find that the plaintiff did everything in his capacity to conform with the demands of each police officer by urging his band members to march at a maximum pace, finding a motion of summary judgment is the allegations of intentional infliction and emotional distress is also denied.

The reasons already stated make it material issue of disputed facts for the jury to find that the arrest, imprisonment of the plaintiff without probable cause the defendant acted endangerously, recklessly, or outrageous, then I will deny for those reasons. The summary judgment motion in its entirety will be denied.

And also for the trial in the case, it might be helpful if you could do a survey and find how many handicapped members are in that band so the jury will have some reason to understand why you wouldn't think they were trying for a position as an Olympic sprinters. A band, I take it, is like a convoy and it can't go any faster than the slowest ship in the convey can.

If you have people in wheelchairs and that sort of thing, it seems to me that that probably would impede your--In the meantime, if this is a standard that the Lancaster County High School Band is going to be put to, you ought to have some form of drill like they have in the military basic training where you teach them the Route Step and the Airborne Shuffle and all those speeded up paces so that they don't run into this often, too many times in their life.

I'm sure you march them around the parade grounds at Lancaster High School don't you?

MR. SPIERS: Yes, sir, we do.

THE COURT: Tell them what double time is and all those other steps even the Goose Step goes at a fairly rapid pace.

The order will be in effect and entered and counsel will receive a copy of it.

MR. KONVICKA: Thank you.

MR. GIBNEY: Thank you, Judge.

APPENDIX D — VIRGINIA CODE § 18.2-460 (MICHIE 1996)

Interference with Administration of Justice

§18.2-460. Obstructing Justice. – A. If any person without just cause knowingly obstructs a judge, magistrate, justice, juror, attorney for the Commonwealth, witness or any law-enforcement officer in the performance of his duties as such or fails or refuses without just cause to cease such obstruction when requested to do so by such judge, magistrate, justice, juror, attorney for the Commonwealth, witness, or law-enforcement officer, he shall be guilty of a Class 2 misdemeanor.

B. If any person, by threats or force, knowingly attempts to intimidate or impede a judge, magistrate, justice, juror, attorney for the Commonwealth, witness, or any law-enforcement officer, lawfully engaged in his duties as such, or to obstruct or impede the administration of justice in any court, he shall be deemed to be guilty of a Class 1 misdemeanor.

C. If any person by threats of bodily harm or force knowingly attempts to intimidate or impede a judge, magistrate, justice, juror, witness, or any law-enforcement officer, lawfully engaged in the discharge of his duty, or to obstruct or impede the administration of justice in any court relating to a violation of or conspiracy to violate § 18.2-248 or §18.2-248.1(a)(3), (b), or (c) he shall be guilty of a Class 5 felony. (Code 1950, § 18.1-310; 1960, c. 358; 1975, cc. 14, 15; 1976, c. 269; 1984, c. 571; 1989, c. 506; 1993, c. 747; 1996, c. 718.)

APPENDIX E — EXCERPTS FROM THE DEPOSITION OF ROBERT F. SPIERS TAKEN MARCH 19, 1998

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

ROBERT F. SPIERS, Plaintiff,

-vs- CIVIL ACTION NO. 3:97CV841

GENE E. SYDNOR, Defendant.

Transcript of the deposition of ROBERT F. SPIERS, taken at the instance of the Defendant, before Roy Garrison Wood, a Registered Professional Reporter Notary Public for the State of Virginia at Large, on March 19, 1998, beginning at 10:10 a.m., at the offices of Emroch & Kilduff, Seventh Floor - 3600 Centre, Richmond, Virginia; said deposition taken pursuant to the Federal Rules of Civil Procedure.

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A No. They have a whistle, and that's their only controlling device.
Q Do they wear white gloves?
A No.
Q And then the band has the woodwinds at the front, is that correct?
A No, sir. We start with the brass.
Q Start with which brass?
A Trumpets and then trombones and then the woodwinds beginning with the saxes, clarinets, flutes, and then drummers in the back.
Q Okay.
Who was it that contacted you and asked you to be in the parade?
A Jean Harper, who is the parade event coordinator.
Q Is that J-E-A-N?
A That's correct.
Q And when did Ms. Harper contact you about being in the parade?
A I believe it was the spring of the year before.
Q Okay, so --
A Approximately May.
Q All right.

is that correct?
A That's correct.
Q Can you tell me what these arrangements were, who you made them with and how?
A The one stipulation to get us back into the parade was not only to move the parade time earlier, but to allow us to get out half-way through at the shopping center right past the intersection of 360 and Route 3, because we needed to get to Richmond, so we made arrangements to do that, and that's where we parked the busses.
Q Okay.
There's like a Dollar General Store down there?
A And laundromat, right. Exactly.
Q And were you in Lancaster County School busses, or did you have --
A We had six Lancaster County School busses.
Q And did you go over with anyone other than Jean Harper the fact that you would be leaving at that point?
A No.
Q Did you ask Jean Harper to tell anyone else that you would be leaving at that point?

A And I responded, "We're going as fast as we can." He responded back to me again, "Pick up the pace or you're out of the parade." And I responded again "We're going as fast as we can."

Q Okay.

A He then physically came over, and grabbed the banner, stopping it in the street.

Q Okay.

A And then began to make the girls turn somewhere to the right.

I was confused. I had no idea what he was doing. Because of my responsibility for the 200 kids and knowing where the busses were, I instructed them to keep moving towards the busses, and that's when Sheriff Sydnor turned around immediately and handcuffed me and said, "You're under arrest," led me to the curb -- the nearest curb, set me down, and said, "Now sit here and let everyone look at you."

He then went back to direct traffic.

Q Were you cuffed in front or in back?

A In front.

Q Your hands were in front of you?

A That's correct.

Q Now, by this point, at some earlier point in the parade, the band had gotten spread out when

Q Four tweets?
A That's exactly right.
Q Followed by what?
A Followed by the drummers -- when they get to a certain point in their cadence, they play a four beat cadence that kids are trained to stop on.
Q Okay, and what is the -- you said that there was another command you could give by a whistle?
A And that's the starting command, which is the same exact command.
Q So those two commands you give with the whistle?
A Right.
Q Did you have a megaphone or anything like that?
A No, sir, I didn't.
Q Was the Sheriff physically rough with you?
A He grabbed me with some force.
Q How much force did he grab you with?
A Um, I don't know how to measure force. He just -- he forcefully --
Q Well, did he hit you?
A No. No, sir. He forcefully grabbed me.

Q Did he sit you down with any force?
A Yes, sir.
Q Did you feel pain?
A No, sir.
Q It was firm?
A Very firm.
Q Both when you sat down and when he was moving you off the route?
A When he grabbed me to handcuff me, and then when he set me down.
Q Did he use force -- did he keep a hand on you as he escorted you off?
A Sure.
Q And was that forceful as well?
A I wouldn't consider that forceful.
Q Okay.
Had you ever been handcuffed before?
A No, sir.
Q Did he say anything to you as he was handcuffing you?
A He said "You're under arrest."
Q Did he say anything else?
A Until we got to the curb.
Q He said nothing as he was escorting you to the curb?

Q Did he frisk you at any point?
A No, sir.
He took my wallet; took my driver's license, but that's it.
Q Okay, and what conversation did you and he have?
A I'm very fuzzy about that aspect of it. I became extremely upset. I began crying. I began to experience feelings of anger, feelings of just pure embarrassment.
I guess my main objective was to find out what I had done wrong and why he had done what he had done.
Q Had you cried before up at the parade ground?
A No, sir.
Q You were, I guess, in shock up there?
A I was trying to keep a demeanor of calmness and demeanor so the incident would not escalate any further.
Q Okay.
You began to cry and become emotional down at the Sheriff's Office with just the two of you there?
A That is correct.

minister or anything like that?

A No, sir.

Q How does this -- how has this affected you other than probably not going back in that parade?

A Being a law abiding citizen, someone who's never been arrested, someone who's never been in trouble with the law, to be handcuffed and arrested in the middle of the street in front of 200, 300 people, in front of my kids, in front of their parents, in front of the community which I abide next to was a very traumatic experience and one that I cannot stop thinking about.

One week after the event, I lost sleep. I constantly think about the event. I run the event over in my mind three, four, five hundred times at night to try to determine whether -- was there any other way that I could have done anything different.

For at least a month afterwards, I have been thinking about the event; been on my mind nonstop. I still think about it today, not as frequently.

I've been ridiculed; I've been harrassed by people who want to know what happened, people who just want to gossip. I have local police officers who like to come play little jokes with their handcuffs-- they're friends of mine, and I experience a sense of

panic
inside when that happens. I play along, you know, with

them.

I look at police officers now in kind of a different light than -- when you experience being arrested, it changes your way of thinking. I'm notorious now; I'm famous now for reasons that I don't want to be famous. I worked thirteen years to build up a band, to build up a band program, to be famous in that way, and now everywhere I go, we're the band who's been arrested, we're the band director who's been arrested. We went down to New Orleans in December and people there, the first thing they say, "Lancaster County, oh, you're the band that got arrested."

I've really been through a lot, and all from this one incident.

Q Has it affected your ability to effectively lead the band or teach music to the students?

A I won't let that happen.

Q Okay.

A My first and foremost priority is to the kids, and I won't let my job performance be affected.

Q You're married?

A Yes, sir.

Q Has it affected your married life in any way?

A It put a strain on my married life for

the first two months with the phone calls. I had nonstop phone calls for three to four weeks after the event with the media coverage.

Yes, it put a big strain. That has calmed down, but now that we're proceeding with the lawsuit, it has picked back up.

Q Do you have children?

A Yes, sir.

Q Affected them at all?

A He's one year old.

Q Okay.

Now, who is it that ridiculed and harrassed you?

A Um, there were several letters to the editor in the months following in the local Warsaw paper to the effect of, you know, if he would have just done what the Sheriff asked, you know, insinuating that I had done things wrong, and like it got so I just stopped reading the paper.

Q You read the Warsaw paper?

A I did after this incident.

Q Why?

A Just to read about what the public had thought about the incident.

Q Was that something you read before the

incident?

A Sure.

Q You were a regular reader of the Warsaw whatever?

Q Not every week, but I read it probably a couple times a month.

Q It's a weekly paper?

A Yes.

Q Is there a paper in Lancaster?

A Yes, it is.

Q Did they have an article about this?

A Yes, you better believe it did.

Q Those were favorable to you, weren't they?

A For the most part, 95 percent of them were.

Q The band continues to win awards and so forth?

A The band continues on being excellent, yes.

Q So it hasn't affected people that don't want to be in the band anymore?

A No.

MR. GIBNEY: I think that's about it.

MR. KILDUFF: Okay. He'll waive.

APPENDIX F — EXCERPTS FROM THE VIDEO DEPOSITION OF GENE E. SYDNOR TAKEN FEBRUARY 20, 1998

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

ROBERT F. SPIERS

Plaintiff,

vs.

THE HON. GENE E. SYDNOR,
SHERIFF OF RICHMOND COUNTY

Defendant.

Case No.
3:97CV841

THE VIDEO DEPOSITION OF GENE E. SYDNOR, taken at the instance of the Plaintiff, before Debra L. Johnson, a Registered Professional Reporter and Notary Public for the State of Virginia at Large, on February 20th, 1998 beginning at 2:00 p.m., at the law firm of Emroch & Kilduff, 3600 West Broad Street, Richmond, Virginia; said deposition taken pursuant to the Federal Rules of Civil Procedure.

A None.
Q Did you consider who would be supervising the young band members while the band leader was under arrest?
A I didn't know he was a band leader at that time.
Q But you hadn't seen any other adults at that time either?
A Not at the time I arrested him, no. That's why when we started directing them across I watched after I could get back to them. There was other adults with.
Q Did you order any of the deputies to assist in getting the band out of the road after you arrested the band leader?
A No.
Q If you didn't think he was a band leader at the time that you arrested him, who do you think he was?
A I didn't know. I'm sure he was with the band, but I didn't know he was the band leader.
Q What is the standard procedure call for you to do with a prisoner after placing him under arrest?
A Just make sure he's safe and under

control until you can get things straight, call the magistrate, you know, after you get to the office, things of that nature.

Q Did you ask any of the other deputies to take the band leader to the magistrate at the time you arrested him?

A No, because we were all busy.

Q Did you -- how far away from the State trooper's vehicle was Mr. Spiers when you arrested him?

A He was on the other side of the road, so he would be -- the State trooper's vehicle is here, and Mr. Spiers was setting here. (Indicating.)

Q So that's approximately how far out there?

A Maybe 75 feet across the intersection, but -- yes, 75 feet.

Q Why did you take him over and place him on the curb?

A Because he would be out of the way of the parade, and there also happen to be an off-duty State trooper standing there.

Q Did you instruct him to watch Mr. Spiers?

A No.

Q Did you have any conversation with him at all?
A Not at that time. No.
Q Did you ever make a statement to Mr. Spiers now you just sit here and let everyone look at you?
A No. No.
Q What statement, if any, did you make to Mr. Spiers placing him on the curb?
A I told him to set right there until I had got through or got back, something like that.
Q Is that the only thing you had said to him since putting the handcuffs on him?
A Um-hum.
Q How long did you leave him on the sidewalk?
A Just to take a guess, about five to 10 minutes at the most, maybe 15.
Q And what did you do after placing him on the sidewalk?
A Well, after getting the band off the street and asking Washington Lee to move it up, I went back to direct traffic.
Q Who at Washington and Lee's band did you ask to move it along?

from --
A It's just down the hill from the parade route behind the courthouse.
Q Was the parade over with when you --
A No.
Q What made -- what was -- what was it that led you to decide that the time that you chose to take him was the appropriate time to take him?
A Well, the off-duty trooper come over to me and said the crowd was getting a little upset and that I should go ahead, and it would probably be best if I went ahead and take him off the scene, so I did. I went over and took him off the scene.
Q Do you remember the name of this trooper?
A Yes. Sargeant Lowery.
Q Lowery?
A L-O-W-E-R-Y.
Q And did you have anyone assist you in removing him from the scene?
A No.
Q You didn't have any reason to expect he intended to resist you, did you?
A No. He was a perfect gentleman.
Q And took him to the courthouse?

APPENDIX G — EXCERPTS FROM THE DEPOSITION OF TROOPER J. M. LOWERY TAKEN MARCH 19, 1998

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

ROBERT F. SPIERS, Plaintiff,

-vs- CIVIL ACTION NO. 3:98CV841

GENE E. SYDNOR, Defendant.

Transcript of the deposition of **TROOPER J. M. LOWERY**, taken at the instance of the Plaintiff, before Roy Garrison Wood, a Registered Professional Reporter and Notary Public for the State of Virginia at Large, on March 19, 1998, beginning at 9:30 a.m. at the offices of Emroch & Kilduff, Seventh Floor – 3600 Centre, Richmond, Virginia; said deposition taken pursuant to the Federal Rules of Civil Procedure.

exchange as they were approaching?

A. No.

Q. And when the Sheriff told Mr. Spiers to sit down there where the people could see him, was that spoken with – can you describe the Sheriff's tone of voice as he spoke that?

A. A stern tone.

Q. Okay.

Was there any conversation between the two of them when the Sheriff came to take him on down to the Sheriff's office later on, him being Mr. Spiers?

A. Not that I know of.

Q. Okay.

Who directed the traffic in that intersection after the Sheriff left?

A. There were three officers at that intersection, Trooper Isreal, and the Sheriff, and his – the Sheriff's brother, Roy Sydnor, and those two were at that intersection.

Q. Okay.

Was Mr. Spiers visibly upset as he sat on the curb?

A. Yes.

Q. Did he cry or anything?

A. His back was to me. I was behind the